A

ZAINON AHMAD & ORS

v.

PADIBERAS NASIONAL BHD

B

FEDERAL COURT, PUTRAJAYA
RAUS SHARIF PCA
ZULKEFLI MAKINUDIN CJ (MALAYA)
RICHARD MALANJUM CJ (SABAH & SARAWAK)
ABDULL HAMID EMBONG FCJ
C SURIYADI HALIM OMAR FCJ
[CIVIL APPEAL NO: 02()-44-2011(B)]
16 JULY 2012

D ***EMPLOYMENT:*** *Contract of service - Corporatisation - Plaintiffs paid benefits upon successful application for voluntary separation scheme ('VSS') - Whether also entitled to 'retirement benefits' provided under cl. 5.5 of company's handbook - Whether two separate contract - Whether VSS extinguished rights under contract of employment*

E The defendant, formerly known as Lembaga Padi dan Beras Negara ('LPN'), was subjected to a corporatisation exercise where former employees of LPN were absorbed. Prior to the corporatisation, the employees of LPN were subjected to a 'Termination of Employment Benefits' under cl. 7.3 of the original
F handbooks known as 'Terma & Syarat Perkhidmatan Eksekutif' and 'Terma & Syarat Perkhidmatan Bukan Eksekutif'. Clause 7.3 stipulated that an employee was entitled to termination benefits when terminated from employment before attaining the age of 55 due to reasons other than of compulsory retirement, optional
G retirement, death or a disability. The defendant then decided to standardise its terms and conditions of employment and subsequently, cl. 7.3 of the original handbooks was incorporated into the subsequent handbooks known as 'Buku Panduan Eksekutif' and 'Buku Panduan Kumpulan Bukan Eksekutif' ('Buku
H Panduan'). As part of their restructuring scheme, employees were invited to leave their employment under the Voluntary Separation Scheme Contract ('VSS'), by virtue of a circular dated 12 September 2003 ('the 2003 circular'). The plaintiffs succeeded in their applications but after two years of ceasing employment
I with the defendant and receiving benefits under the VSS, the plaintiffs claimed for the payment under the retirement benefits of

cl. 5.5 of the 'Buku Panduan'. The High Court allowed the plaintiffs' application but the decision was unanimously reversed by the Court of Appeal. Hence, the present appeal. The main issue for determination was whether the rights that arose upon the termination of an employment contract were extinguished pursuant to a termination through VSS despite the absence of an express provision to that effect.

Held (dismissing appeal with costs)
Per Raus Sharif PCA delivering the judgment of the court:

(1) The plaintiffs had exercised their option under the VSS and accepted the payable amounts. Therefore their contention that they were entitled to receive not only the termination benefits under the VSS but also the termination benefits under cl. 5.5 of the 'Buku Panduan' was obviously misplaced. The two contracts did not co-exist and VSS was a separate and independent contract intended to mutually override and terminate an existing employment contract. A contract which was rescinded by agreement is completely discharged and cannot be revived. It was certainly not intended that after the employee had left under the VSS, the employee could still return to ask for other benefits under the terms of his contract of employment. The plaintiffs' contention that the termination benefits were still intact and ongoing after such rescission was misconstrued. (para 15)

(2) Although it was not expressly stated that the VSS would extinguish the rights and obligations under the contract of employment upon mutual termination, the rescission resulted in the extinguishment of rights under the former contract of employment. (para 16)

(3) The plaintiffs knew what retirement or termination benefits and compensation they would be paid or receive upon termination of their service under the VSS. The plaintiffs would have been in a position to compare and to realise that the compensation they would receive under the VSS for termination of their service did not include what they would receive under cl. 5.5 of the 'Buku Panduan'. (para 17)

(4) Under the VSS, the employees had the option to accept the said scheme or continue to work as before. Once the option had been exercised by the employees, the question of it being unfair did not arise. An employee who, on his own will, had accepted the benefits of the VSS, resigned, signed a full and final settlement and walked away cannot then turn around and ask for other benefits. (para 18)

Bahasa Malaysia *Translation Of Headnotes*

Defendan, yang dahulunya dikenali sebagai Lembaga Padi dan Beras Negara ('LPN'), telah melaksanakan langkah pengkorporatan di mana bekas pekerja LPN telah diserap masuk. Sebelum pengkorporatan tersebut, kakitangan LPN tertakluk kepada 'Penamatan Faedah-faedah Pekerjaan' di bawah kl. 7.3 buku panduan asal yang dikenali sebagai 'Terma & Syarat Perkhidmatan Eksekutif' dan 'Terma & Syarat Perkhidmatan Bukan Eksekutif'. Klausa 7.3 menetapkan bahawa pekerja berhak ke atas faedah-faedah penamatan apabila ditamatkan daripada pekerjaan sebelum mencapai umur 55 tahun disebabkan oleh sebab-sebab selain daripada persaraan wajib, persaraan pilihan, kematian atau hilang upaya. Defendan kemudiannya memutuskan untuk menyeragamkan terma dan syarat pekerjaan dan seterusnya, kl. 7.3 buku panduan asal telah dimasukkan ke dalam buku-buku panduan berikutnya yang dikenali sebagai 'Buku Panduan Eksekutif' dan 'Buku Panduan Kumpulan Bukan Eksekutif' ('Buku Panduan'). Sebagai sebahagian daripada skim penstrukturan semula mereka, pekerja-pekerja telah diundang untuk meninggalkan pekerjaan mereka di bawah Kontrak Skim Pemisahan Sukarela ('KSPS'), berdasarkan suatu pekeliling bertarikh 12 September 2003 ('Pekeliling 2003'). Plaintif-plaintif berjaya dalam permohonan mereka tetapi selepas dua tahun tamat berkerja dengan defendan dan menerima faedah-faedah di bawah KSPS, plaintif-plaintif menuntut pembayaran di bawah faedah-faedah persaraan kl. 5.5 'Buku Panduan'. Mahkamah Tinggi membenarkan permohonan plaintif-plaintif tetapi keputusan tersebut diakas sebulat suara oleh Mahkamah Rayuan. Oleh itu, rayuan ini. Isu utama yang perlu diputuskan adalah, sama ada hak-hak yang timbul apabila penamatan kontrak pekerjaan telah dilenyapkan selaras dengan penamatan melalui KSPS walaupun dengan ketiadaan peruntukan yang nyata baginya.

Diputuskan (menolak rayuan dengan kos)
Oleh Raus Sharif PMR menyampaikan penghakiman mahkamah:

(1) Plaintif-plaintif telah melaksanakan pilihan mereka di bawah KSPS dan menerima amaun yang perlu dibayar. Oleh itu, hujahan mereka bahawa mereka bukan sahaja berhak menerima faedah-faedah penamatan di bawah KSPS tetapi juga faedah-faedah penamatan di bawah kl. 5.5 'Buku Panduan' jelas tidak bersesuaian. Kedua-dua kontrak tidak wujud bersesama dan KSPS merupakan kontrak yang berasingan dan bebas yang bertujuan untuk mengatasi dan menamatkan kontrak pekerjaan yang sedia ada. Suatu kontrak yang telah dibatalkan melalui persetujuan adalah dilepaskan sepenuhnya dan tidak boleh dihidupkan semula. Ia sudah tentu bukan menjadi tujuan pihak-pihak bahawa selepas seseorang pekerja telah berhenti di bawah KSPS, dia masih boleh kembali untuk meminta faedah-faedah lain di bawah terma-terma kontrak pekerjaan. Hujahan plaintif-plaintif bahawa faedah-faedah penamatan masih kekal dan berterusan selepas pembatalan tersebut telah disalah tafsir.

(2) Walaupun tidak dinyatakan bahawa KSPS akan melenyapkan hak-hak dan obligasi-obligasi di bawah kontrak pekerjaan dengan adanya persetujuan penamatan bersama, penamatan mengakibatkan pelupusan hak-hak di bawah kontrak pekerjaan yang lama.

(3) Plaintif-plaintif mengetahui faedah-faedah persaraan atau penamatan dan pampasan yang akan dibayar atau diterima oleh mereka atas penamatan perkhidmatan mereka di bawah KSPS. Plaintif-plaintif tentunya berada dalam kedudukan untuk membandingkan dan menyedari bahawa pampasan yang akan mereka terima di bawah KSPS bagi penamatan perkhidmatan mereka tidak termasuk apa yang akan mereka terima di bawah kl. 5.5 'Buku Panduan'.

(4) Di bawah KSPS, pekerja-pekerja mempunyai pilihan untuk menerima skim tersebut atau terus bekerja seperti sebelumnya. Apabila pilihan telah dibuat oleh pekerja-pekerja, persoalan bahawa ia tidak adil, tidak timbul. Seseorang pekerja yang, atas kehendaknya sendiri, telah menerima faedah-faedah KSPS, meletak jawatan, menandatangani penyelesaian penuh dan muktamad dan beredar tidak boleh kemudiannya kembali dan meminta faedah-faedah lain.

Case(s) referred to:

AK Bindal & Anor v. Union of India & Anor [2003] 2 LRI 837 ***(refd)***

Birch and Humber v. University of Liverpool [1985] 1 RLR 165 ***(refd)***

Liverpool City Council v. Irving & Anor [1977] AC 293 ***(refd)***

Logan Salton v. Durham County Council [1989] IRLR 99 ***(refd)***

Paal Wilson & Co v. Partenreederei Hannah Blumenthal [1983] QBD 854 ***(refd)***

Pan Ah Ba & Anor v. Nanyang Construction Sdn Bhd [1969] 1 LNS 123 FC ***(refd)***

Ramli Shahdan & Anor v. Motor Insurer's Bureau Of West Malaysia & Anor [2006] 1 CLJ 224 CA ***(refd)***

Stocznia Gdynia SA v. Gerarbulk (Court of Appeal, Civil Division [2009], EWCA Civ 75; [2009] 2 All ER (Comm) ***(refd)***

Yap Nyo Nyok @ Yap Yoon Jin (F) v. Bath Pharmacy Sdn Bhd [1993] 3 CLJ 188 HC ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 63

For the appellants - Hj Sulaiman Abdullah (R Sivarasa & Stanley Sinnappen with him); M/s Vazeer Akbar Majid & Co

For the respondent - Wong Chong Wah (Dato' Ghazi Ishak & K Siva Kumar with him); M/s Skrine

[Appeal from Court of Appeal, Putrajaya; Civil Appeal No: B-02-374-2008]

Reported by Najib Tamby

JUDGMENT

Raus Sharif PCA:

Introduction

[1] This is an appeal by the appellants against the decision of the Court of Appeal on the 7 February 2011, in allowing the respondent's appeal against the decision of the High Court. Leave to appeal was granted by this court on 20 June 2011 and the only question of law framed for determination in this appeal is:

> Whether rights that arise upon the termination of an employment contract are extinguished by a termination pursuant to a Voluntary Separation Scheme Contract ("VSS") even when the VSS does not contain any of the following:

(a) an express clause that extinguishes such rights which arise only upon termination;

(b) an express waiver of those rights by the party entitled to the benefits flowing therefrom; and

(c) an express provision stating that the VSS now encapsulates the entirety of the rights of all parties thereto.

[2] The appellants are the plaintiffs and the respondent is the defendant. For convenience, parties will be referred to as the plaintiffs and defendant as in the trial court.

Background Facts

[3] The defendant herein was formerly known as Lembaga Padi dan Beras Negara (LPN). In 1994, LPN was subjected to a corporatisation exercise wherein the former employees of LPN were absorbed into the defendant with effect from 1 July 1994. Before the corporatisation exercise, the employees of LPN were subjected to a "Termination Of Employment Benefits" as envisaged in cl. 7.3 of the original handbooks known as "Terma & Syarat Perkhidmatan Eksekutif" and "Terma & Syarat Perkhidmatan Bukan Eksekutif". Under the said clause, an employee was entitled to termination benefits when terminated from employment before attaining the age of 55 due to reasons other than that of compulsory retirement, optional retirement, death or a disability.

[4] With privatisation, the defendant decided to standardise its terms and conditions of employment to be in tandem with the spirit of corporatisation. Clause 7.3 of the original handbooks was incorporated into the subsequent handbooks known as "Buku Panduan Kumpulan Eksekutif" and "Buku Panduan Kumpulan Bukan Eksekutif" (hereinafter referred to as the "Buku Panduan") which in turn superseded the earlier handbook. Under the "Buku Panduan" cl. 7.3 was rewritten in cl. 5.5 which reads:

> A permanent officer of BERNAS who is confirmed in his appointment and who is terminated from service with BERNAS before attaining compulsory retirement age for reasons other than Compulsory Retirement, Optional Retirement, Death or Disability will be paid termination benefits as follows:
>
> Factor x Last drawn Basic Monthly salary x years of service with BERNAS.

(Factor is 1.5 for those employed below ten years of service and two for those above ten years of service).

[5] On or about 12 September 2003, the defendant invited applications from its employees to leave their employment under the VSS, under a circular dated 12 September 2003 ('the 2003 Circular'). This exercise was part of their restructuring scheme.

[6] According to the 2003 circular, a successful applicant would be subject to the following terms:

(a) The last date of employment will be 31 December 2003;

(b) A generous basic compensation ranging from 23 months to 35 months basic salary or the number of months until retirement, whichever is lesser;

(c) For those who joined the defendant from LPN, an additional *ex-gratia* compensation ranging from half months to three months last drawn salary;

(d) Salary *in lieu* of notice;

(e) Salary *in lieu* of unutilised annual leave; and

(f) Medical benefits for a period of one year after termination.

[7] The plaintiffs were successful in their applications under the VSS. The benefits under the VSS were duly paid to the plaintiffs. However nearly two years after the plaintiffs had ceased employment with the defendant and had received the benefits under the VSS, the plaintiffs issued a letter dated 12 December 2005 to the defendant asking to be paid their purported entitlement to "retirement benefits" under cl. 5.5(a) of the "Buku Panduan".

[8] The defendant did not agree with the plaintiffs' request, hence this action by the plaintiffs.

The High Court

[9] The plaintiffs succeeded in their claim before the learned High Court judge. The learned High Court judge agreed with the plaintiffs that the VSS scheme in year 2003 did not specifically provide for the termination of the plaintiffs' rights under the "Buku Panduan" pursuant to cl. 5.5 or cl. 7.3, it did not terminate their rights or prohibit them to claim for termination benefits as provided for under cl. 5.5 of the "Buku Panduan".

[10] The learned judge concluded that the plaintiffs' rights under the original employment contract were still subsisting as they were neither rescinded nor cancelled by the plaintiffs or the defendant. In support thereof, the learned judge referred to the case of *Ramli Shahdan & Anor v. Motor Insurer's Bureau Of West Malaysia & Anor* [2006] 1 CLJ 224 and s. 63 of the Contracts Act 1950).

Court Of Appeal

[11] Aggrieved by the High Court decision the defendant appealed to the Court of Appeal. The Court of Appeal unanimously allowed the appeal and held *inter alia* that:

(a) The termination under a VSS was mutually agreed upon and did not include benefits payable under cl. 5.5 of the "Buku Panduan" on termination;

(b) to allow the plaintiffs to regain benefits which were not included in the VSS package would frustrate the whole purpose of introducing the VSS;

(c) The abovementioned mutual termination brought about a complete rescission of the plaintiffs former contracts of employment and along with it cl. 5.5 without the need for an express clause extinguishing the rights under the former contract of employment;

(d) The new agreement constituted by the VSS clearly revealed an intention to rescind the plaintiffs' employment contract and the plaintiffs' acceptance of the VSS package constituted an act to voluntarily, consciously and affirmatively give up their rights under cl. 5.5. Reference was made to the case of *Ramli Shahdan & Anor v. Motor Insurer's Bureau Of West Malaysia & Anor* [2006] 1 CLJ 224.

(e) The Court of Appeal reiterated the fact that the retirement/termination benefits in the "Hand Book" would only be paid if the plaintiffs continue with their employment with the defendant. Great reliance was placed by the Court of Appeal in the case of *AK Bindal & Anor v. Union of India & Anor* [2003] 2 LRI 837.

Submissions

[12] Before us learned counsel for the plaintiffs submitted the following arguments:

(i) that based on the VSS 2003 Circular, the VSS 2003 application form, the defendant's letter accepting plaintiffs' application for separation under VSS 2003 as well as the terms found on cl. 5.5 of the "Buku Panduan", it is clear that the terms in cl. 5.5 is a benefit that survives the termination of the contract of employment. He contended that the termination benefits can only be extinguished when there is an express clause providing such and that the employee has expressly waived this right. In essence, learned counsel submitted that the 2003 circular is lacking of such clause. In support thereof learned counsel referred to the following authorities: *Paal Wilson & Co v. Partenreederei Hannah Blumenthal* [1983] QBD 854; *Stocznia Gdynia SA v. Gerarbulk (Court of Appeal, Civil Division* [2009], EWCA Civ 75; [2009] 2 All ER (Comm).

(ii) that if the defendant had indeed intended to remove such right, it should have been clearly stated in clear words in the VSS 2003 Circular. Learned counsel drew the attention of this court to another VSS in 2007; wherein, the defendant had clearly excluded such rights. In support of his argument he cited the following authorities: *Yap Nyo Nyok @ Yap Yoon Jin (F) v. Bath Pharmacy Sdn Bhd* [1993] 3 CLJ 188; *Liverpool City Council v. Irving & Anor* [1977] AC 293.

(iii) that reference was made to s. 63 of the Contracts Act 1950 which provides that "there must be clear words to show that the parties had intended to substitute the rights under the old contract with the new contract". The Federal Court case of *Pan Ah Ba & Anor v. Nanyang Construction Sdn Bhd* [1969] 1 LNS 123 was cited in support;

(iv) that retirement/termination benefits are different from the compensation a company pays to get an employee to leave employment before his time. In support thereof learned counsel referred to *AK Bindal (supra)*.

[13] On the other hand learned counsel for the defendant argued:

(i) that a VSS is an agreement to rescind the employment contract by mutual agreement. The consideration for the rescission is the complete abandonment by the parties of their respective rights and obligations of the parties under the

existing contract of employment. Reference was made to these cases: *Birch and Humber v. University of Liverpool* [1985] 1 RLR 165; *Paal Wilson & Co v. Partenreederei Hannah Blumenthal (supra)* and s. 63 of the Contracts Act 1950.

(ii) that if the employee is still permitted to raise a claim even after he has opted for VSS and has accepted the amount paid to him, the whole purpose of introducing the scheme would be frustrated. Reference was again made to the case of *AK Bindal (supra)*; and

(iii) that cl. 5.5 of the "Buku Panduan" which deals with termination benefits does not apply to a termination by mutual agreement under VSS. Reference was made to the case of *Birch and Humber (supra); Logan Salton v. Durham County Council* [1989] IRLR 99.

Findings

[14] The main issue in this is appeal is whether, the rights that arise upon the termination of an employment contract are extinguished pursuant to a termination through VSS despite the absence of an express provision to that effect. In the case of *AK Bindal (supra)*, the Supreme Court of India had succinctly laid down the governing principles for VSS thus:

> The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency ...
>
> The whole idea of implementing VRS is to save costs and improve our productivity. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of him again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period ...
>
> If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he had opted for Voluntary Retirement Scheme and had accepted the amount paid to him, the whole purpose of introducing the scheme would be totally frustrated.

[15] We are inclined to express the same view. More so in the present case since the undisputed facts show that the plaintiffs had exercised their option under the VSS and accepted the amounts payable thereunder. As such the contention of the plaintiffs that they are entitled not only to receive the termination benefits under the VSS but also the termination benefits under cl. 5.5 of the "Buku Panduan" is obviously misplaced. We are of the view that the VSS scheme is a separate and independent contract intended to mutually override and terminate an existing contract of employment. The two contracts do not co-exist. Otherwise the very objective of VSS as adumbrated in *AK Bindal (supra)* is defeated. A contract which is rescinded by agreement is completely discharged and cannot be revived. It is certainly not intended that after the employee leaves under the VSS, the employee can still return to ask for other benefits under the terms of his contract of employment. Thus, we find the plaintiffs contention that the termination benefits are still intact and ongoing after such rescission, with respect, is misconstrued.

[16] In respect of reliance on s. 63 of the Contracts Act 1950 by the plaintiffs we are inclined to agree with the reasoning of the Court of Appeal. We agree that although it was not expressly stated that the VSS would extinguish the rights and obligations under the contract of employment upon mutual termination, the rescission resulted in the extinguishment of rights under the former contract of employment. (See: *Ramli Shahdan & Anor v. Motor Insurer's Bureau Of West Malaysia & Anor* [2006] 1 CLJ 224).

[17] Based on the undisputed facts presented before us it is clear to our minds that the plaintiffs knew what retirement or termination benefits and compensation they would be paid or receive upon termination of their service under the VSS. The plaintiffs would have been in a position to compare and to realise that the compensation they would receive under the VSS for termination of their service did not include what they would receive under cl. 5.5 of the "Buku Panduan".

[18] It is our view that under VSS the employees have the option to accept the said scheme or continue to work as before. Therefore, once the said option has been exercised by the employees, the question of it being unfair does not arise. To us an employee who on his own will, accepts the benefits of the VSS, resigns, signs a full and final settlement and walks away cannot then turn around and ask for any other benefits.

Conclusion

[19] For the foregoing reasons we therefore answer the question posed in the affirmative. Accordingly the appeal is dismissed with costs. We will now invite counsel to address us on the issue of costs.